

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed May 27, 2008. Claims 3-7, 27 and 28 were pending and rejected in view of cited art.¹ Claims 3 and 5 are amended. Claims 3-7, 27 and 28 are now pending in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 3-7 and 27 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,242,459 (*Buelna*) in view of U.S. Patent No. 5,797,929 (*Andreas*) and U.S. Patent No. 6,733,509 (*Nobles*). Claim 28 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Buelna* in view of *Andreas* and *Nobles*, as applied to claim 3, and further in view of U.S. Publication No. 20020010480 (*Sancoff*).

Applicants traverse the Examiner's rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims. By contrast to the invention claimed in independent claim 3, do

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the claim amendments and new claims can be found throughout the specification and drawings as originally filed.

not teach or suggest a mechanism for *Buelna*, *Andreas*, *Nobles*, and *Sancoff* as is presently claimed.

The Office Action indicated that “*Buelna* discloses the claimed device except for the shaft 16 having the groove formed in a side thereof, . . . [or] the suture retainer slidably disposed within the shaft and within the cutting member, wherein the suture retainer is moved within the shaft and within the cutting member and the cutting member moves around the suture retainer to cut the suture.” (Office Action, page 3). *Andreas* and *Nobles* were cited, respectively, to teach the groove and the suture retainer.

The Office Action indicates that *Nobles* teaches “a suture retainer 528,532 disposed within a cutting member . . . wherein the cutting member moves around the suture retainer to cut the suture” (Office Action, Page 4). Applicant respectfully disagrees. The device of *Nobles* includes a plunger that is moved distally to “drive[] the plunger against the suture collar 532 which surrounds the suture end segments” (Col. 9, ll. 53-55). “[A] coiled heating element 536 surrounds the suture collar 532 . . . [and] melts or deforms” the collar (Col. 9, ll. 57-59). Following formation of a fused mass (the combination of the collar and the suture end segments) “the portions of the free ends of the suture that extend from the mass will be adjacent to and exposed to the coiled heating element . . . [which] is active to sever the end segments” (Col. 10, ll. 17-22). Independent claim 3, recites, in part, “the second lever operatively coupled to the cutting member to move the cutting member within the shaft and around the suture retainer to cut the suture.” The “coiled heating element . . . [which] is active to sever the end segments” of *Nobles* neither “move[s] . . . within the shaft and around the suture retainer to cut the suture.”

In addition to the above, the Office Action identified the plunger and suture collar of *Nobles* as the suture retainer. Neither the suture collar nor the plunger appear to include “a suture protector in an exterior surface of the suture retainer, the suture protector extending from a retainer distal end toward a retainer proximal end” as claimed in independent claim 3. *Buelna*, *Andreas*, and *Sancoff*, do not appear to overcome the identified deficiency in *Nobles*.

Accordingly, because the allegedly obvious combination does not disclose each and every element of claim 3, Applicant’s respectfully submit that independent claim 3 and its associated dependent claims are in condition for allowance.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 19th day of September, 2008.

Respectfully submitted,

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